

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

David Antonio Little, Jr.,	)	Case No. 0:23-cv-2872-RMG
	)	
	)	
Plaintiff,	)	<b>ORDER AND OPINION</b>
	)	
v.	)	
	)	
Eric McDaniel, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 18) recommending that the Court dismiss Plaintiff’s complaint without prejudice and without issuance and service of process. For the reasons set forth below, the Court adopts the R&R as the order of the Court and dismisses Plaintiff’s complaint without prejudice and without issuance and service of process.

**I. Background and Relevant Facts**

Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C. §1983 and 1986 regarding his conditions of confinements at Florence County Detention Center, beginning in March 2021. (Dkt. No. 18 at 1).

On August 15, 2023, the Magistrate Judge issued an R&R recommending the complaint be dismissed without prejudice and without issuance and service of process. (Dkt. No. 18). Plaintiff did not file objections to the R&R.

## **II. Legal Standards**

### **a. *Pro Se* Pleadings**

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *See Weller v. Dep't of Social Services*, 901 F.2d 387 (4th Cir. 1990).

### **b. Magistrate Judge's Report and Recommendation**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Because Plaintiff did not file objections to the R&R, the Court reviews the R&R for clear error.

### III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that Plaintiff's complaint should be dismissed without prejudice and without service of process as it is duplicative of a previously filed case, C/A No. 0:22-4288-RMG-PJG. (Dkt. No. 18 at 3-4) ("The court concludes that this matter should be summarily dismissed because it is duplicative of another lawsuit already filed by Plaintiff. On November 28, 2022, Plaintiff filed a nearly identical lawsuit for damages pursuant to § 1983 against McDaniel, Timmons, and Quick. C/A No. 0:22-4288-RMG-PJG ('2022 lawsuit'). Plaintiff raised substantially the same allegations as he raises here about McDaniel forcibly medicating him and Timmons and Quick tasing him and slamming his fingers in a cell flap. The court authorized service of process in that case and the defendants filed an answer on February 17, 2023. . . . Plaintiff's Complaint in this case, filed June 21, 2023, appears to be his attempt to refile the 2022 lawsuit. However, the court has not granted Plaintiff's motion to dismiss the 2022 lawsuit without prejudice. That case remains pending, rendering this case duplicative of the 2022 lawsuit. The court has the inherent authority to issue orders to ensure that its docket is managed efficiently.").

### IV. Conclusion

For the reasons set forth above, the Court **ADOPTS** the R&R (Dkt. No. 18) as the order of Court and **DISMISSES** Plaintiff's complaint **WITHOUT PREJUDICE AND WITHOUT ISSUANCE AND SERVICE OF PROCESS.**

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
United States District Judge

September 5, 2023  
Charleston, South Carolina